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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170710645-7645-01]

RIN 0648-BH03

Fisheries of the Northeastern United States; Northeast Skate Complex; Framework

Adjustment 4

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: We propose regulations submitted by the New England Fishery Management Council in Framework Adjustment 4 to the Northeast Skate Complex Fishery Management Plan. We are proposing to de-couple the skate wing and bait inseason trip limit adjustments to better control the catch of bait skate and to provide a more consistent supply of skate bait to the lobster fishery. This action also clarifies that in-season possession limits may be removed when necessary to help harvest the fisheries total allowable landings. This action is needed to allow the fishery to more effectively harvest its optimum yield.

DATES: Public comments must be received by *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0099, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D= NOAA-NMFS-2017-0099](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0099), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: “Comments on Skate Framework 4.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

New England Fishery Management Council staff prepared an environmental assessment (EA) for Northeast Skate Complex Framework Adjustment 4 that describes the proposed action and other considered alternatives. The EA provides a thorough analysis of the biological, economic, and social impacts of the proposed measures and other considered alternatives, a preliminary Regulatory Impact Review, and economic analysis. Copies of the Framework 4 EA are available on request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. This document is also

available from the following internet addresses: <http://www.greateratlantic.fisheries.noaa.gov/>
or <http://www.nefmc.org>.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst,
(978) 281-9182.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Skate Complex Fishery Management Plan (FMP), developed by the New England Fishery Management Council and implemented in 2003, manages a complex of seven skate species (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate) off the New England and Mid-Atlantic coasts. Skates are harvested and managed in two different fisheries: one for food (the wing fishery) and one for lobster bait (the bait fishery). Fishery specific allocations, called total allowable landings (TALs), are set through biennial specifications. Additional information on the skate fisheries can be found online at <https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/skate/index.html>.

While the wing and bait fisheries have several differing management measures, such as possession limits, the management measures for the two fisheries are closely related. Generally, the bait fishery operates under an exemption from the wing fishery possession limits. The bait fishery is managed under a 3-season fishing year: Season 1 is May 1 through August 31; Season 2 is September 1 through October 31; and, Season 3 is November 1 through April 30. When the bait fishery reaches a TAL threshold trigger of 90 percent of a season's TAL, an in-season accountability measure for the bait fishery removes the exemption to the wing-fishery possession limit. When this happens, the exemption is removed and the bait fishery possession limit reverts to the substantially lower wing possession limit. Additional information on previous and current

skate management measures can be reviewed through the Council's website at <http://www.nefmc.org/management-plans/skates>.

The linked accountability measures for these fisheries recently became problematic, during fishing year 2016 (Figure 1). Framework Adjustment 3 included a 23-percent reduction in the TAL for fishing years 2016-2017. Because of the reduced allocation, the skate bait TAL threshold trigger was reached twice, requiring us to implement incidental possession limits in Season 2 (81 FR 71641; October 18, 2016) and Season 3 (82 FR 8364; January 25, 2017). The first time, the bait fishery possession limit was reduced from 25,000 lb (11,340 kg) per trip to the standard skate wing possession limit (9,307 lb or 4,222 kg). The second time, however, the bait possession limit was reduced simultaneously with the wing possession limit because the wing fishery had reached its TAL threshold trigger of 85 percent. This adjustment, to an incidental possession limit of 1,135 lb (515 kg) per trip, effectively closed the skate bait fishery. This closure had substantial negative impacts on the lobster fishery due to the lack of available bait.

In response to the closure, the Council developed Framework 4 to reduce the likelihood of a lengthy in-season closure while ensuring bait landings do not exceed the TAL.

Proposed Measures

This action proposes several measures designed to de-couple the skate wing and bait in-season possession limit accountability measures, control catch, and potentially provide a more consistent bait supply to the lobster fishery. Generally, these changes are intended to slow fishing effort and catch to prevent or reduce the need for a lengthy fishery closure while still allowing the fishery to catch its TAL. Figure 2 shows how in-season accountability measures would be implemented if Framework 4 were approved. We are proposing the following measures, as recommended by the Council.

1. Reduce the Season 3 Bait Skate Possession Limit

This measure would reduce the Season 3 (November through April) possession limit from 25,000 lb (11,340 kg) to 12,000 lb (5,443 kg). Because Season 3 is the longest season in the bait fishery (6 months), reducing the trip limit should slow the catch rate and lessen the chance of closing the fishery.

2. Reduce the Season 3 Bait Skate TAL Threshold Trigger

This measure would change the Season 3 TAL threshold trigger at which the incidental possession limit would become effective. Similar to the proposed trip limit reduction, dropping the TAL threshold trigger from 90 to 80 percent means that the incidental possession limit would be enacted sooner, which would slow catch rates and diminish the likelihood of closing the fishery.

3. Establish a Separate Bait Skate Incidental Possession Limit

As previously explained (and detailed in Figure 1), the current regulations link the bait skate incidental possession limit to the skate wing fishery possession limit. Currently, the bait skate incidental possession limit is equivalent to the skate wing possession limit. This action proposes to de-couple the in-season accountability measures for the two fisheries and establish an 8,000-lb (3,629-kg) incidental possession limit whenever the skate bait fishery is projected to reach a seasonal threshold trigger.

Once implemented, an incidental possession limit could be removed and the standard trip limit reinstated if catch projections indicate the TAL will not be harvested and removing the limits are not expected to result in exceeding the TAL.

4. Implement a Bait Skate Fishery Closure When the TAL is Harvested

This measure would close the bait fishery when 100 percent of the bait TAL is projected

to be harvested. Currently, there is no measure to close the fishery; the incidental possession limits for the bait fishery are linked to the wing fishery. Adding this measure would better ensure that the skate bait fishery does not exceed its TAL.

5. Removal of Incidental Possession Limit if Necessary to Achieve TAL

This action would also clarify, under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, regulations pertaining to in-season possession limit reductions (incidental possession limits) in the skate fishery. If NMFS determines that an in-season possession limit reduction could prohibit the skate bait fishery from achieving its annual TAL, NMFS may remove the in-season reduction and reinstate the standard seasonal possession limit. A similar action was taken during fishing year 2016 (82 FR 13564, March 14, 2017) and language is proposed at 50 CFR 648.322(f) to better clarify the regulations to be consistent with the intent of the Council.

Figure 1. Flow Chart Depicting Skate Bait and Skate Wing Season 2 and 3 In-Season Closures During Fishing Year 2016.

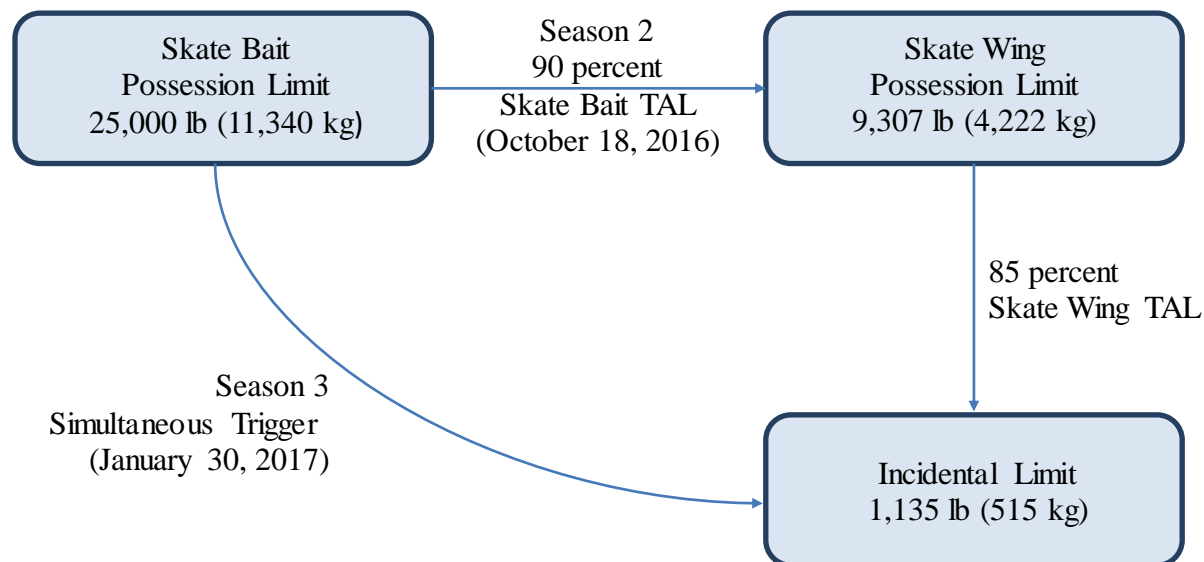
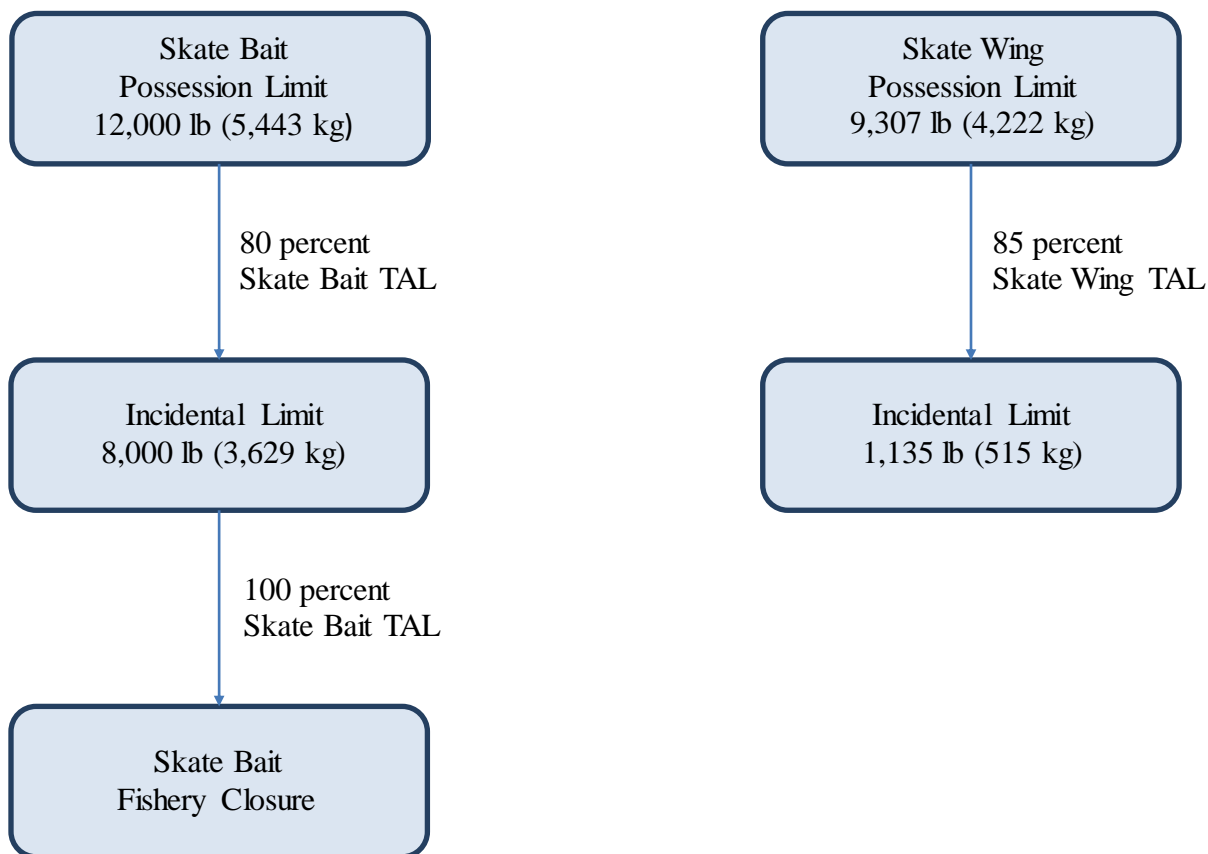


Figure 2. Flow Chart Depicting Changes Proposed in Framework Adjustment 4 for Skate Bait Season 3.



Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the FMP, Framework 4, provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule does not contain policies with federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule would have on small entities, including small businesses, and also determines ways to minimize these impacts. The IRFA includes this section of the preamble to this rule and analyses contained in Framework 4 and its accompanying EA/RIR/IRFA. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

Description of the Reasons Why Action by the Agency is Being Considered and Statement of the Objectives of, and Legal Basis for, this Proposed Rule

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble of this proposed rule.

Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply

The proposed modifications to skate bait fishery effort controls would impact vessels that

hold Federal open access commercial skate permits that participate in the skate fishery or affiliated groups that hold multiple open access commercial skate permits that participate in the skate fishery. Within the skate bait fishery, the majority of affiliate groups consist of a single permit-holder, or 71 vessels in fishing year 2015. Four vessels belong to affiliated groups that hold two or more permits.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The Council's analysis indicates the maximum number of small fishing entities that may be affected by this action is 69 (71 vessels), based on 2015 data. During fishing year 2015, only 69 affiliated groups landed any amount of skate for bait. At the permit level, every skate landing permit is defined as a small business according to size standards (the top five vessels have total revenues between 600 thousand and 1.9 million dollars in 2015).

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule

This action does not introduce any new reporting, recordkeeping, or other compliance requirements.

Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule

The proposed regulations do not create overlapping regulations with any state regulations or other federal laws.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The Council considered revising the skate bait threshold trigger, reduced possession limit, and closure independently, but elected to include all of the measures into a single action. The Council was concerned that independently, the measures would not restrict catch enough and leave the fishery at risk of a substantial closure with accompanying economic impacts. Incorporating all of the measures proposed accomplishes the goals and objectives of the FMP and minimizes the economic impact on small entities. Retaining the status quo management measures would not slow catch and would result in the fishery having a higher likelihood of closing for an extended period, resulting in greater profit losses to industry.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 16, 2017.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.322, revise paragraphs (c) through (e) and add paragraphs (f) and (g) to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

* * * * *

(c) *Bait Letter of Authorization (LOA)*. A skate vessel owner or operator under this part may request and receive from the Regional Administrator an exemption from the skate wing possession limit restrictions for a minimum of 7 consecutive days, provided that when the vessel is fishing pursuant to the terms of authorization at least the following requirements and conditions are met:

- (1) The vessel owner or operator obtains and retains onboard the vessel a valid LOA. LOAs are available upon request from the Regional Administrator.
- (2) The vessel owner or operator fishes for, possesses, or lands skates only for use as bait.
- (3) The vessel owner or operator possesses or lands no more than 25,000 lb (11,340 kg) of whole skates per trip during Seasons 1 or 2 and no more than 12,000 lb (5,443 kg) of whole skates per trip during Season 3.
- (4) The vessel owner or operator possesses or lands only whole skates less than 23 inches (58.42 cm) total length, and does not possess or land any skate wings or whole skates greater than 23 inches (58.42 cm) total length.

(5) Vessels that choose to possess or land skate wings during the participation period of this letter of authorization must comply with possession limit restrictions under paragraph (b) of this section for all skates or skate parts on board. Vessels possessing skate wings in compliance with the possession limit restrictions under paragraph (b) may fish for, possess, or land skates for uses other than bait.

(6) The vessel owner or operator complies with the transfer at sea requirements at § 648.13(h).

(d) *In-season adjustment of skate bait possession limits.* When the Regional Administrator projects that 90 percent of the skate bait fishery seasonal quota has been landed in Seasons 1 or 2, or 80 percent of the annual skate bait fishery TAL has been landed, the Regional Administrator shall, through a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act, reduce the skate bait trip limit to 8,000 lb (3,629 kg) of whole skates for the remainder of the quota period, unless such a reduction would be expected to prevent attainment of the seasonal quota or annual TAL.

(e) *In-season closure of skate bait fishery.* When the Regional Administrator projects that 100 percent of the skate bait fishery TAL will be landed, the Regional Administrator shall, through a notice in the *Federal Register* consistent with the Administrative Procedure Act, close the skate bait fishery, unless such a closure would be expected to prevent attainment of the annual TAL. During a skate bait fishery closure all skate bait LOAs as described in paragraph (c) of this section are void. All skates harvested and landed during a skate bait fishery closure will be attributed towards the skate-wing TAL as described in this section.

(f) *Removal of in-season possession limit reductions.* If it is determined that an in-season trip limit reduction as described in paragraphs (d) and (e) of this section could prohibit the skate bait fishery from achieving its annual TAL, the in-season reduction may be removed.

(g) *Prohibitions on possession of skates.* A vessel fishing in the EEZ portion of the Skate Management Unit may not:

(1) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

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